



C.M.A.No.503 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.503 of 2023

1. G.Meena

2. G.Kamalesh, Minor

3. G.Sai Nitish, Minor

(Minors 2 and 3 are represented by
their mother and next friend

Mrs.G.Meena)

.. Appellants

..Vs..

1. G.Balamurugan

2. The New India Assurance Co. Ltd.,
No.232, Bombay Mutual Building,
6th Floor, N.S.C.Bose Road,
Chennai- 600 001.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 09.11.2021 passed in M.C.O.P.No.7259 of 2017 by the Motor Accident Claims Tribunal, Chennai (in the II Court of Small Causes, Chennai-104).

For Appellants : Ms.Sunithi Abirami
for Mr.M.Pachaiyappan
For Respondents : Mr.J.Chandran (R2)



J U D G M E N T

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This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 09.11.2021 made in M.C.O.P.No.7259 of 2017 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

2. The appellants are the claimants in M.C.O.P.No.7259 of 2017 on the file of *Motor Accidents Claims Tribunal/II Court of Small Causes, Chennai..* They filed the above said claim petition, claiming a sum of **Rs.75,00,000/-** as compensation for the death of one G.Govindasamy, who died in an accident that took place on 21.07.2017.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of **Rs.20,14,236/-** as compensation to the appellants.

4.Not being satisfied with the amount awarded by the Tribunal, the



appellants have come out with the present appeal seeking enhancement of compensation.

5.The learned counsel for the appellants contended that though the Tribunal on considering the oral and documentary evidence arrived at an conclusion that the accident occurred due to rash and negligent driving by the driver of the 1st respondent lorry, erred in fixing 10% contributory negligence on the part of the deceased, for not wearing helmet and prays to set aside the same. He further submitted that no compensation was awarded to the wife towards ***Loss of Consortium*** and the compensation awarded under the other heads is also very low and prays for enhancement.

6.Per contra, the learned counsel appearing for the 2nd respondent- Insurance Company contended that since the deceased had not worn the helmet while riding the motor cycle, which is mandatory, the Tribunal has rightly fixed 10% contributory negligence on the part of the deceased. He further submitted that the Tribunal, considering the oral and documentary evidence has rightly awarded compensation. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of



the appeal.

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7. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

8. As regards the fastening of 10% contributory negligence on the part of the deceased is concerned, as rightly pointed out by the learned counsel for the appellants that though the Claims Tribunal by considering the evidence of P.W.2- Mr.Kuppusamy, an eye witness to the accident and Ex.P1- F.I.R. copy has rightly arrived at a conclusion that the accident occurred due to the rash and negligent driving by the driver of the 1st respondent, Taurus Lorry bearing Registration No.TN-22-CC-8494, however, erred in fixing 10% contributory negligence on the part of the deceased for non wearing of helmet. Non wearing of helmet is not the cause for the accident. Hence, this Court is of the view that non wearing of helmet by the deceased does not imply that the deceased has also contributed for the accident and therefore the fixation of 10% contributory negligence on the part of the deceased is liable to be set aside and accordingly the same is set aside.



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9. It is the case of the appellants that at the time of accident the deceased was aged 35 years and was a lorry driver at the time of accident and earning a sum of Rs.20,000/- per month. But no documents have been filed to that effect. The Tribunal, relying upon the Judgment of this Court in the case of *Managing Director, Tamil Nadu Transport Corporation (Coimbatore Division II) Ltd, Erode Vs. P.Jaganathan and Another* reported in *CDJ 2018 MHC 6400* and *Syed Sadiq Vs. United India Insurance Company* reported in *2014 (1) TNMAC 459* and considering the year of accident, has rightly fixed a sum of Rs.12,905/- as monthly income of the deceased while determining the compensation towards **Dependency** which need not be interfered with. Since, no compensation was awarded towards **Loss of Consortium**, a sum of Rs.40,000/- is awarded under the said head. The compensation awarded towards Loss of Love and Affection is very low and therefore the same is enhanced to **Rs.80,000/-**. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependecny	21,68,040/-	21,68,040/-	Confirmed
2.	Loss of Estate	15,000/-	15,000/-	Confirmed
3.	Loss Love and Affection	40,000/-	80,000/-	Enhanced
4.	Loss of Consortium	NIL	40,000/-	Granted
5.	Funeral Expenses	15,000/-	15,000/-	Confirmed
	Total	Rs.22,38,040/-	Rs.23,18,040/-	Enhanced by
	Less:contributory negligence @ 10%	2,23,804/-		Rs.3,03,804 /-
		Rs.20,14,236/-		

10.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.20,14,236/- is hereby enhanced to Rs.23,18,040/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Out of the said compensation, the 1st and 2nd appellants are entitled for a sum of Rs.5,00,000/- each and the 3rd appellant is entitled to a sum of Rs.13,18,040/- The 2nd respondent-Insurance Company is directed to deposit the award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of *six*



weeks from the date of receipt of a copy of this judgment to the credit of **M.C.O.P.No.7259 of 2017** on the file of the Motor Accidents Claims Tribunal/II Judge, Court of Small Causes, Chennai. On such deposit being made, the Tribunal is directed to transfer the share of the 3rd appellant directly to her Bank account through RTGS, within a period of **three weeks**. As far as the shares of the minor appellants viz., appellants 1 and 2 are concerned, their shares are directed to be deposited in any one of the nationalized banks under the Fixed Deposit scheme, till they attain majority and their mother viz., the 1st claimant shall withdraw the interest once in three months. The appellants/claimants shall pay necessary Court fee, if any, on the enhanced compensation. However, it is made clear that if there is any delay in filing the C.M.A. and in case of any earlier order by this Court, depriving interest for the period of delay in question, the interest portion for that period should be excluded for the purpose of granting interest. No costs.

02.02.2024

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Index : Yes / No

Internet : Yes / No



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To

1. The New India Assurance Co. Ltd.,
No.232, Bombay Mutual Building,
6th Floor, N.S.C.Bose Road,
Chennai- 600 001.
2. The Motor Accident Claims Tribunal,
II Court of Small Causes, Chennai.
3. The Section Officer,
VR Section,
High Court,
Madras.



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KRISHNAN RAMASAMY, J.

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